

REMARKS

Claims 1-2, 4-14, 16, 20-25, and 27-28 are currently pending in the subject application and are presently under consideration. A listing of the currently pending claims is shown on pp. 2-7 of the Reply. Favorable reconsideration of the subject patent application is respectfully requested in view of the comments herein.

I. Rejection of Claims 9-11, 13, 24, and 25 Under 35 U.S.C. §103(a)

Claims 9-11, 13, 24, and 25 stand rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Ito, *et al.* (EP 1 089 578 A2) (hereinafter “Ito”) in view of Lee, *et al.* (US 6,741,836) (hereinafter “Lee”). The withdrawal of this rejection is respectfully requested for at least the following reasons. It is admitted in the Office Action dated May 14, 2009 (hereinafter “Office Action”) that Ito fails to teach all aspects for each independent claim 9 and 25, and Lee is introduced to cure such deficiencies. However, Lee cannot be relied upon to teach or suggest the admitted deficiencies of Ito because Lee is not citable art with respect to the present application pursuant to 35 U.S.C. §103(c). The following is a quotation of 35 U.S.C. §103(c) which forms at least one basis for withdrawal of this rejection:

Subject matter developed by another person, which qualifies as prior art only under subsection (e), (f), and or (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.

In particular, Lee qualifies under 35 U.S.C. §102(e) because Lee did not grant as US 6,741,836 until May 25, 2004, which is after the filing date of November 25, 2003 of the subject application. Moreover, it is submitted that the subject application and Lee were at the time the claimed invention was made, subject to an obligation of assignment to Qualcomm Incorporated. Accordingly, any rejection under 35 U.S.C. §103(a) based on Lee, would not be proper pursuant to the provisions of 35 U.S.C. §103(c). In view of

the foregoing, it is respectfully requested that the rejection of claims 9 and 25, and claims 10-11, and 13 that depend therefrom, be withdrawn.

In addition, the rejection of claim 24 under Lee and Ito is improper because claim 24 depends upon claim 14. Therefore claim 24 should be similarly rejected as claim 14 with at least the art cited in the rejection of claim 14 discussed below. To this end, it is requested that the improper rejection of claim 24 be removed. Regardless, as discussed *infra* with respect to the rejection of claim 14, the rejection of claim 24 should be withdrawn pursuant to 35 U.S.C. §103(c).

II. Rejection of Claims 1, 2, 4-8, 12, 14, 16, 20-23, 27, and 28 Under 35 U.S.C. §103(a)

Claims 1, 2, 4-8, 12, 14, 16, 20-23, 27, and 28 stand rejected under 35 U.S.C. §103(a) as allegedly being obvious over Ito in view of Lee in view of Mayo, *et al.* (US 6,571,111) (hereinafter “Mayo”). It is respectfully requested that this rejection be withdrawn for at least the following reasons. It is asserted in the Office Action that the combined teachings of Ito, Lee, and Mayo teach the aspects of claims 1, 2, 4-8, 12, 14, 16, 20-23, 27, and 28. However, as discussed above, Lee is not a citable reference pursuant to 35 U.S.C. §103(c), and therefore Lee cannot be relied upon to teach any aspects of the subject claims. To this end, Lee and Mayo fail to teach or suggest all aspects of the subject claims, and it is respectfully requested that the rejection of claims 1, 2, 4-8, 12, 14, 16, 20-23, 27, and 28 be withdrawn.

CONCLUSION

The present application is believed to be in condition for allowance in view of the above comments and amendments. A prompt action to such end is earnestly solicited.

In the event any fees are due in connection with this document, the Commissioner is authorized to charge those fees to Deposit Account No. 50-1063[QUALP837US].

Should the Examiner believe a telephone interview would be helpful to expedite favorable prosecution, the Examiner is invited to contact applicants' undersigned representative at the telephone number below.

Respectfully submitted,

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